

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAYLAN LYDELL PLOUSHA,

Plaintiff,

v.

ARDEN PARK APARTMENTS,

Defendant.

Case No. 2:25-cv-00262-TLN-CSK

FINDINGS AND RECOMMENDATIONS

(ECF Nos. 1, 2)

Plaintiff Daylan Lydell Plousha is representing himself in this action and seeks leave to proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915.¹ (ECF No. 2.) For the reasons that follow, the Court recommends Plaintiff’s IFP application be denied, and the Complaint be dismissed without leave to amend.

I. MOTION TO PROCEED IN FORMA PAUPERIS

28 U.S.C. § 1915(a) provides that the court may authorize the commencement, prosecution or defense of any suit without prepayment of fees or security “by a person who submits an affidavit stating the person is “unable to pay such fees or give security therefor.” This affidavit is to include, among other things, a statement of all assets the person possesses. *Id.* The IFP statute does not itself define what constitutes insufficient

¹ This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636, Fed. R. Civ. P. 72, and Local Rule 302(c).

1 assets. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th Cir. 2015). In *Escobedo*,
2 the Ninth Circuit stated that an affidavit in support of an IFP application is sufficient
3 where it alleges that the affiant cannot pay court costs and still afford the necessities of
4 life. *Id.* “One need not be absolutely destitute to obtain benefits of the in forma pauperis
5 statute.” *Id.* Nonetheless, a party seeking IFP status must allege poverty “with some
6 particularity, definiteness and certainty.” *Id.* According to the United States Department
7 of Health and Human Services, the current poverty guideline for a household of one (not
8 residing in Alaska or Hawaii) is \$15,060.00. See U.S. Dpt. Health & Human Service
9 (available at <https://aspe.hhs.gov/poverty-guidelines>).

10 Here, Plaintiff has made the required showing under 28 U.S.C. § 1915(a). (ECF
11 No. 2.) However, the Court will recommend Plaintiff’s IFP application be denied because
12 the action is facially frivolous and without merit because it fails to state a claim and lacks
13 subject matter jurisdiction. “A district court may deny leave to proceed in forma pauperis
14 at the outset if it appears from the face of the proposed complaint that the action is
15 frivolous or without merit.” *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998)
16 (quoting *Tripathi v. First Nat. Bank & Tr.*, 821 F.2d 1368, 1370 (9th Cir. 1987)); see also
17 *McGee v. Dep’t of Child Support Servs.*, 584 Fed. App’x. 638 (9th Cir. 2014) (“the district
18 court did not abuse its discretion by denying McGee’s request to proceed IFP because it
19 appears from the face of the amended complaint that McGee’s action is frivolous or
20 without merit”); *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965) (“It is the duty of the
21 District Court to examine any application for leave to proceed in forma pauperis to
22 determine whether the proposed proceeding has merit and if it appears that the
23 proceeding is without merit, the court is bound to deny a motion seeking leave to
24 proceed in forma pauperis.”). Because it appears from the face of the Complaint that this
25 action is frivolous and is without merit as discussed in more detail below, the Court
26 recommends denying Plaintiff’s IFP motion.

27 II. SCREENING REQUIREMENT

28 Pursuant to 28 U.S.C. § 1915(e), the court must screen every in forma pauperis

1 proceeding, and must order dismissal of the case if it is “frivolous or malicious,” “fails to
2 state a claim on which relief may be granted,” or “seeks monetary relief against a
3 defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*,
4 203 F.3d 1122, 1126-27 (2000) (en banc). A claim is legally frivolous when it lacks an
5 arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In
6 reviewing a complaint under this standard, the court accepts as true the factual
7 allegations contained in the complaint, unless they are clearly baseless or fanciful, and
8 construes those allegations in the light most favorable to the plaintiff. See *Neitzke*, 490
9 U.S. at 327; *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960
10 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011).

11 Pleadings by self-represented litigants are liberally construed. *Hebbe v. Pliler*, 627
12 F.3d 338, 342 & n.7 (9th Cir. 2010) (liberal construction appropriate even post-*Iqbal*).
13 However, the court need not accept as true conclusory allegations, unreasonable
14 inferences, or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d
15 618, 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does
16 not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007);
17 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

18 To state a claim on which relief may be granted, the plaintiff must allege enough
19 facts “to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A
20 claim has facial plausibility when the plaintiff pleads factual content that allows the court
21 to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
22 *Iqbal*, 556 U.S. at 678. A pro se litigant is entitled to notice of the deficiencies in the
23 complaint and an opportunity to amend unless the complaint’s deficiencies could not be
24 cured by amendment. See *Lopez*, 203 F.3d at 1130-31; *Cahill v. Liberty Mut. Ins. Co.*, 80
25 F.3d 336, 339 (9th Cir. 1996).

26 **III. THE COMPLAINT**

27 Plaintiff brings this action against Defendant Aspen Park Apartments. Compl. at 2
28 (ECF No. 1). Plaintiff states the basis for jurisdiction is federal question based on

1 “discrimination, water damage, [and] kick doe activitys.” *Id.* at 4. The entirety of Plaintiff’s
 2 allegations are as follow:

3 Somebody had a key and could walk in and out of that place
 4 and its flooded out side of the windows. That will cause low
 5 temp and my stuff will not charge and I think only one plug
 6 works there.

7 [...]

8 People ran in and out of my apartment tracking dog poo and
 9 water damage, also they kicked the door more than once with
 10 no license plate or tags on their vehicle (a sign this people
 11 have no insurance talk about illegal).

12 Compl. at 5, 7. For relief, Plaintiff seeks \$75,000 and states “I can’t go in and out of the
 13 place due to water and dog poo I would have to walk my stuff through in order to move
 14 to a house. Cost more than 1 job.” *Id.* at 6; see *id.* at 7.

15 **IV. DISCUSSION**

16 **A. Subject Matter Jurisdiction**

17 The Court lacks subject matter jurisdiction over this action. Federal courts are
 18 courts of limited jurisdiction and may hear only those cases authorized by federal law.
 19 *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). Jurisdiction is a threshold
 20 inquiry, and “[f]ederal courts are presumed to lack jurisdiction, ‘unless the contrary
 21 appears affirmatively from the record.’” *Casey v. Lewis*, 4 F.3d 1516, 1519 (9th Cir.
 22 1993) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546 (1986)); see
 23 *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1380
 24 (9th Cir. 1988). Without jurisdiction, the district court cannot decide the merits of a case
 25 or order any relief and must dismiss the case. See *Morongo*, 858 F.2d at 1380. A federal
 26 court’s jurisdiction may be established in one of two ways: actions arising under federal
 27 law or those between citizens of different states in which the alleged damages exceed
 28 \$75,000. 28 U.S.C. §§ 1331, 1332. “Subject-matter jurisdiction can never be waived or
 forfeited,” and “courts are obligated to consider *sua sponte*” subject matter jurisdiction
 even when not raised by the parties. *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012).

 The Complaint fails to establish the Court’s subject matter jurisdiction. See

1 Compl. The Complaint states no basis for federal court jurisdiction, and none is
2 apparent. Although the Complaint indicates the basis for subject matter jurisdiction is
3 federal question based on “discrimination, water damage, [and] kick doe activitys,” no
4 federal cause of action is clearly asserted, and no federal claims are suggested by the
5 facts, to the extent the facts are discernible. See Compl. at 4-7. Though the term
6 “discrimination” is used once in the federal question jurisdiction section, the Complaint
7 contains no allegations related to discrimination. See *id.* at 4. The Complaint also fails to
8 establish diversity jurisdiction. Although Plaintiff satisfies the amount in controversy
9 requirement by stating he seeks \$75,000 for relief, Plaintiff fails to establish diversity of
10 citizenship. See Compl. at 4-5. On the face of the Complaint, all parties appear to be
11 citizens of California. Compl. at 2 (Defendant located in Sacramento, California), 4
12 (Plaintiff is a California resident), 5 (Defendant’s principal place of business is in
13 California); see also *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir.
14 2001) (“Section 1332 requires complete diversity of citizenship; each of the plaintiffs
15 must be a citizen of a different state than each of the defendants.”). Because there is no
16 diversity of citizenship established here, the Court finds that it also lacks subject matter
17 jurisdiction based on diversity jurisdiction.

18 **B. Federal Rule of Civil Procedure 8**

19 Plaintiff’s Complaint does not contain a short and plain statement of a claim as
20 required by Federal Rule of Civil Procedure 8. In order to give fair notice of the claims
21 and the grounds on which they rest, a plaintiff must allege with at least some degree of
22 particularity overt acts by specific defendants which support the claims. See *Kimes v.*
23 *Stone*, 84 F.3d 1121, 1129 (9th Cir. 1996). Here, the Complaint does not contain facts
24 supporting any cognizable legal claim against Defendant. The Complaint consists of a
25 few vague and conclusory allegations that fail to establish Plaintiff’s causes of action.
26 While Plaintiff lists “discrimination, water damage, [and] kick doe activitys,” as causes of
27 action, there is no federal cause of action clearly asserted as stated above. See Compl.
28 at 4-7. Although the Federal Rules adopt a flexible pleading policy, even a pro se

litigant's complaint must give fair notice and state the elements of a claim plainly and succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984).

The Complaint is subject to dismissal. See *McHenry v. Renne*, 84 F.3d 1172, 1178-80 (9th Cir. 1996) (affirming dismissal of complaint where "one cannot determine from the complaint who is being sued, for what relief, and on what theory, with enough detail to guide discovery").

C. Leave to Amend

In considering whether leave to amend should be granted, the Court finds that the Complaint is without merit because it fails to state a claim and lacks subject matter jurisdiction. See *generally* Compl. In light of the Complaint's deficiencies and the Court's lack of subject matter jurisdiction, granting leave to amend would be futile. The Complaint should therefore be dismissed without leave to amend. See *Lopez*, 203 F.3d at 1130-31; *Cato v. United States*, 70 F.3d 1103, 1105-06 (9th Cir. 1995).

V. CONCLUSION

Based upon the findings above, it is RECOMMENDED that:

1. Plaintiff's motion to proceed in forma pauperis (ECF No. 2) be DENIED;
2. Plaintiff's Complaint (ECF No. 1) be DISMISSED without leave to amend;
- and
3. The Clerk of the Court be directed to CLOSE this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court and serve a copy on all parties. This document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served on all parties and filed with the Court within 14 days after service of the objections. Failure to file objections within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

1 Dated: April 25, 2025

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3 CHI SOO KIM
4 UNITED STATES MAGISTRATE JUDGE

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